

**Letter of Findings: 65-20200248**  
**Indiana Oversize/Overweight Penalty Assessment**  
**For the Year 2020**

**NOTICE:** [IC 6-8.1-3-3.5](#) and [IC 4-22-7-7](#) require the publication of this document in the Indiana Register. This document provides the general public with information about the Indiana Department of Revenue's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

### HOLDING

The Department did not agree that Indiana Motor Carrier established that the imposition of the assessed oversize/overweight penalty was entirely unwarranted; however, the Department agreed that Motor Carrier presented mitigating circumstances justifying the reduction of the original oversize/overweight penalty amount.

### ISSUE

#### **I. Motor Vehicles - Oversize/Overweight Penalty.**

**Authority:** [IC 6-8.1-5-1](#); [IC 6-8.1-1-1](#); [IC 9-20-1-1](#); [IC 9-20-1-2](#); [IC 9-20-4-3](#); [IC 9-20-6-11](#); [IC 9-20-18-7](#); [IC 9-20-18-14.5](#); *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007).

Taxpayer protests the assessment of an oversize/overweight civil penalty.

### STATEMENT OF FACTS

Taxpayer is an Indiana company in the business of providing its customers contract hauling services. Publicly available information indicates that Taxpayer has four employees and operates six trucks and tractors. That information further indicates that Taxpayer primarily transports agricultural grain products. Taxpayer operates its vehicles on both Indiana and out-of-state highways.

Taxpayer operated one of its vehicles in Indiana. The truck was being used to transport soybean products from Indiana to Michigan. Afterwards, the truck was returning to Indiana from Michigan while carrying a similar product when it was stopped by the Indiana State Police while traveling on Highway I 69 on March 2019.

The vehicle and its load were found to be overweight. The officer determined that the truck's gross weight was 80,150 pounds which was 150 pounds over the 80,000-pound limit. The officer noted that the "over drive tandem axle[]" weight was 35,900 pounds which was 1,900 pounds over the 34,000-pound limit. In addition, the vendor's "bill of sale" indicated that the vehicle's gross weight was 80,520 pounds. The driver did not have an oversize/overweight permit.

The Indiana Department of Revenue ("Department") issued a \$5,000 "civil penalty" which the Department, in its notice and proposed assessment sent Taxpayer, described as "the maximum civil amount that may be imposed by Indiana law . . . ."

Taxpayer disagreed with the proposed penalty assessment and submitted a protest to that effect. An administrative hearing was conducted by telephone during which Taxpayer's representative explained the basis for its protest.

#### **I. Motor Vehicles - Oversize/Overweight Penalty.**

### DISCUSSION

Taxpayer argues that, as noted above, the \$5,000 penalty was unwarranted and should be abated. The issue here is whether Taxpayer has met its burden of establishing that the police officer's weight calculations were

incorrect and/or that Taxpayer's vehicle, in this instance, was under Indiana's maximum weight limitations.

Taxpayer objects to the \$5,000 penalty on various grounds:

- Taxpayer states that neither the driver nor Taxpayer had any control over the amount of soybean product loaded into the vehicle at the Michigan grain elevator. In addition, Taxpayer indicated that the granary did not allow grain products to be off-loaded once the product was loaded into customers' vehicles. According to Taxpayer, the granary did not allow off-loading because of the granary's product could have been cross contaminated from the contents of a previous cargo.
- When the driver left the granary location, the Taxpayer's on-board weight gauge indicated that the vehicle's gross weight was 80,000 pounds.
- Taxpayer maintains that Indiana law allows variances in weight limits and that, taking into account those statutory variances, the vehicle was within Indiana's weight limits.

As a threshold issue, it is Taxpayer's responsibility to establish that the existing proposed assessment is incorrect. As stated in [IC 6-8.1-5-1\(c\)](#), "The notice of proposed assessment is prima facie evidence that the [D]epartment's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

The Department notes that, "[W]hen [courts] examine a statute that an agency is 'charged with enforcing. . . [courts] defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party.'" *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014). Thus, interpretations of Indiana tax law contained within this decision are entitled to deference.

[IC 9-20-1-1](#) provides that "[e]xcept as otherwise provided in [IC Art. 9-20], a person, including a transport operator, may not operate or move upon a highway a vehicle or combination of vehicles of a size or weight exceeding the limitations provided in [IC Art. 9-20]."

According to [IC 9-20-1-2](#), the owner of a vehicle "may not cause or knowingly permit to be operated or moved upon a highway [in Indiana] a vehicle or combination of vehicles of a size or weight exceeding the limitations provided in [IC Art. 9-20]."

Once the carrier receives a permit, [IC 9-20-6-11\(b\)](#) states that "[a] person may not violate the terms or conditions of a special permit."

[IC 9-20-18-14.5](#) authorizes the Department to impose civil penalties against Motor Carriers that obtain a permit under IC Art. 9-20 and violate IC Art. 9-20 ("Permit Violation Civil Penalty") or are required, but fail, to obtain a permit under IC Art. 9-20 ("No Permit Civil Penalty"). [IC 9-20-18-14.5\(c\)](#) provides that a person "who transports vehicles or loads subject to this article and fails to obtain a permit required under this article is subject to a civil penalty . . . ." According to [IC 9-20-18-14.5\(b\)](#), the Department may also subject a person to a civil penalty if the person "obtains a permit under" IC Art. 9-20 and violates IC Art. 9-20 by being overweight or oversize.

[IC 6-8.1-1-1](#) states that fees and penalties stemming from IC Art. 9-20 violations are a "listed tax." These listed taxes are in addition to and separate from any arrangement or agreement made with a local court or political subdivision regarding the traffic stop. In other words, the \$5,000 penalty at issue is over and above any other penalty paid to the local jurisdiction.

In addition to the arguments pointed out above, Taxpayer also cites to two Indiana statutes which allow a certain variance in the otherwise permissible weight limits. Specifically, Taxpayer relies on [IC 9-20-4-3\(b\)](#) and [IC 9-20-18-7\(c\)](#) which provide a weight variance (or latitude) when registering a vehicle and a similar variance when the Taxpayer has no control over the amount of product loaded into the vehicle.

[IC 9-20-4-3\(b\)](#) provides:

Because of the various types of scales used and the variance in scale weights, a penalty may not be assessed if the actual scale weight of a vehicle or combination of vehicles with load does not exceed one and one-half percent (1 1/2 [percent]) of the registered weight of the vehicle or combination of vehicles, including load.

In addition, Taxpayer cites to [IC 9-20-18-7\(c\)](#) which provides in part:

- A court shall determine the extent of liability of the driver, carrier, shipper, or other party shown to be liable.
- (b) The *department of state revenue* shall determine the extent of the civil penalties assessed under *section 14.5* of this chapter.
- (c) It is a criminal or civil defense if a party can show that the party:
- (1) could not reasonably have known the actual weight of the load involved;
  - (2) had no access to or control of the loading of an overweighted load[.]
- (*Emphasis added*).

The Department concludes that Taxpayer's reliance on [IC 9-20-4-3](#) is misplaced because the provision refers to standards applicable in the initial registration of the vehicle. [IC 9-20-4-3](#) is inapplicable when considering a post-registration oversize/overweight violation.

However, the Department does agree that [IC 9-20-18-7\(c\)](#) is relevant in assessing an oversize/overweight violation. In this case, Taxpayer indicates that it "had no access to or control of the loading of an overweighted load" under [IC 9-20-18-7\(c\)](#) because that was entirely the responsibility of the granary. The Department has no reason to question the veracity of Taxpayer's explanation and Taxpayer may well be correct. However, there is no documentation clearly supporting that assertion.

The Department is unable to entirely disregard the officer's determination and concludes that Taxpayer has not met its statutory burden under of [IC 6-8.1-5-1](#) establishing that the penalty was *wrong*.

The Department respectfully declines to entirely abate the penalty. Nonetheless, in addition to providing Taxpayer an opportunity to protest, [IC 9-20-18-14.5](#) provides the Department "not more than" language when generating a proposed assessment amount. This provision allows consideration and weighing of verified and relevant mitigating circumstances. Taxpayer has provided such verification and the circumstances here are relevant. In this case, the Department will generate a proposed assessment with a reduced amount, as authorized under the Department's statutory discretion and this Letter of Findings.

#### FINDING

Taxpayer's protest is sustained in part and denied in part.

January 3, 2023

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An [html](#) version of this document.